

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

BRYAN RUDOLPH MORALES,

Defendant and Appellant.

B159611

(Los Angeles County
Super. Ct. No. KA052495)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Mark Grant Nelson, Judge. Affirmed.

Danalynn Pritz, under appointment for the Court of Appeal, for Defendant
and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D.
Matthews and William H. Davis, Jr., Deputy Attorneys General, for Plaintiff and
Respondent.

A jury convicted Ryan Rudolph Morales of assault with a deadly weapon by means likely to produce great bodily injury and found he personally inflicted great bodily injury in the commission of the offense. (Pen. Code, § 245, subd. (a)(1); 12022.7, subd. (a).) In bifurcated proceedings, the trial court found he had suffered a prior felony serious conviction, making him also eligible for sentencing under “Three Strikes” law, and that he had served a separate prison term for a felony. (Pen. Code, §§ 667, subds. (a)(1), (b)-(i); 1170.12, subds. (a)-(d); 667.5, subd. (b).) The court imposed an aggregate sentence of 13 years in state prison. On appeal from the judgment, he contends the trial court committed evidentiary errors.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prosecution Evidence

On April 13, 2001, Jamal Beard and Fernando De Palma were selling Home Alarms Systems “door to door” for Edison Security in a residential neighborhood. Both men were in company uniforms. They took a break and sat down on the curb near a car. Appellant emerged from a house and yelled at the men to get away from his car. Beard approached appellant, attempted to shake his hand and to engage in his sales pitch. Appellant became verbally abusive and Beard decided to leave. He bent down to retrieve his clipboard and appellant hit him in the jaw. Beard sustained a stab wound in his jaw. He saw a screwdriver without a handle in appellant’s hand. Beard fell into the street and

¹ Appellant also argues the trial court committed reversible error by instructing the jury with CALJIC No. 17.41.1, the “anti-nullification” instruction. The contention this instruction deprives a defendant of the right to a fair trial and to due process of law was rejected in *People v. Engelman* (2002) 28 Cal.4th 436, in which the Supreme Court held CALJIC No. 17.41.1 does not infringe upon a defendant’s federal or state constitutional right to trial by jury or state constitutional right to a unanimous verdict.

appellant climbed into the car and drove away. Beard later identified appellant from a six-pack of photographs.

Arturo Flores, a bystander, testified he saw appellant hit Beard with his fist and move away. Beard held his neck and was bleeding. Beard was with DePalma. He later identified appellant from a six-pack of photographs.

Defense Evidence

Appellant testified on his own behalf. His defense was self-defense. He denied attacking Beard with a screwdriver on April 13, 2001. He claimed Beard and DePalma were sitting beside his girlfriend's car, wearing "regular street clothes." A confrontation arose because the two men refused to move away from the car. Beard and appellant exchanged insults. Beard lunged towards appellant and raised his arm "like he was going to strike" him. Appellant removed a pen from his pocket, swung it at Beard, striking him once. DePalma approached from behind and appellant fled on foot. Melinda Green, appellant's girlfriend, came from the house and started the car. She drove up to appellant. He jumped into the car and they drove away.

Green testified and corroborated some of appellant's testimony. She did not witness the stabbing.

Rebuttal Evidence

Flores testified he never saw Beard or DePalma lunge towards or "take a swing" at appellant.

DISCUSSION

1. The evidence of appellant's subsequent possession of a screwdriver

On December 21, 2001, appellant assaulted a man other than Beard with a handleless screwdriver and was arrested. There was a witness to the assault. Before trial and without defense objection, the trial court ruled the admissibility of the witness's testimony was limited to her observation of the handleless screwdriver in appellant's hand. However, during the prosecution's case in chief, the witness blurted out appellant had used the screwdriver as a weapon against her brother. The court denied defense motions for a mistrial and a prosecution motion to admit the challenged testimony under Evidence Code section 1101, subdivision (b). The court admonished the jury to disregard the testimony concerning the assault. Without defense objection, the witness then testified that she saw what appeared to be a handleless screwdriver in appellant's hand on December 21, 2001. A police officer testified she recovered the screwdriver from the witness's yard in Whittier.

Appellant argues the admission into evidence of appellant's subsequent possession of the screwdriver was prejudicial error under *People v. Watson* (1956) 46 Cal.2d 818, 836. He also faults the court for failing to give a limiting instruction concerning this inadmissible evidence. He has not preserved these claims on appeal. By not objecting to the disputed evidence in the trial court, appellant is now precluded from challenging its admissibility. (Evid. Code § 353, subd. (a); *People v. Bolin* (1998) 18 Cal.4th 297; *People v. Pinholster* (1992) 1 Cal.4th 865, 935.) Additionally, his failure to request a limiting instruction renders the issue waived on appeal. (*People v. Sully* (1991) 53 Cal.3d 1195, 1218.)

In any event, there is no reasonable probability the trial court's evidentiary ruling prejudiced appellant. The bystander Flores's testimony corroborated the victim Beard's account that appellant was the aggressor. Although appellant insisted he struck Beard with a ballpoint pen rather than a screwdriver, to the extent this distinction is relevant to

proving aggravated assault, he admitted leaving a screwdriver on the ground in Whittier in December 2001. Thus, there is no reasonable probability there would have been a result more favorable to appellant in the absence of the court's ruling. (*People v. Watson*, *supra*, 46 Cal.2d 818, 836; see *People v. Whitson* (1998) 17 Cal.4th 229, 251.)

2. The evidence of appellant's accusation against the victim

Beard was asked during cross-examination whether he heard appellant accuse him of breaking into the car. The court sustained the prosecutor's relevancy objection to the question. Appellant contends that the victim's response was relevant for two reasons: (1) to prove appellant's then-existing state of mind (Evid. Code § 1250); and (2) to impeach the victim (Evid. Code § 780). Appellant maintains that the trial court's evidentiary ruling denied him his constitutional right to present a defense.²

Respondent correctly argues that any testimony elicited as to appellant's impression that Beard had attempted to burglarize the car was not relevant to prove either aggravated assault or the defense of self-defense. (See Evid. Code § 350.) Moreover, even if the trial court erred by excluding the proffered testimony to impeach the victim, the error was harmless. If Beard's testimony were discounted for lack of credibility, there remains Flores's testimony, from which the jury could reasonably determine that appellant did not attack Beard in self-defense.

Nor was appellant denied his constitutional right to present a defense. "As a general matter, the '[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant's right to present a defense.' [Citations.] Although completely excluding evidence of an accused's defense theoretically could rise to this level, excluding defense evidence on a minor or subsidiary point does not impair an accused's due process right to present a defense. [Citation.] If the trial court

² Defense counsel made this claim of error before the trial court.

misstepped, '[t]he trial court's ruling was an error of law merely; there was no refusal to allow [defendant] to present a defense, but only a rejection of some evidence concerning the defense.' [Citation.]" (*People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103.)

The trial court's evidentiary ruling did not preclude appellant from challenging the victim's credibility through argument or appellant's testimony. He was fully able to present his entire theory of defense even without the excluded evidence.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

WOODS, J.

We concur:

JOHNSON, Acting P. J.

ZELON, J.